IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

OP.No. 9548 of 2000(L)

PETITIONERS:

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1. PANCHAMAN TRADERS LTD.,
REP. BY ITS MANAGING PARTNER,
P.E.CHIDAMBARAN, KALARIKKAL,
KUNNANTHANAM.

2. K.R.SADASIVAN, RADHAYALAM, KAVIYOOR,
THIRUVALLA.

3. K.VIJAYAN, MINU BHAVAN, KUNNANTHANAM,
MALLAPPALLY.

BY ADV. SRI.MVS.NAMBOOTHIRY
SRI.S.SANTOSH KUMAR (PERUNAD)

RESPONDENTS:

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1. ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE I, THIRUVALLA.

2. THE TAX RECOVERY OFFICER, INCOME TAX
DEPARTMENT, KOTTAYAM.

3. THE CHIEF COMMISSIONER OF INCOME TAX, COCHIN.

BY ADV. SRI.P.K.R.MENON(SR.),SC FOR IT
SRI.GEORGE K. GEORGE, SC FOR IT

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 14/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.15948/2000 IN O.P. NO.9548/2000

DISMISSED:

14.11.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF PARTNERSHIP DEEDDT.3.3.92.

P2: TRUE COPY OF NOTICE DT.16.7.98 ISSUED TO THE PETITIONER BY R2.

P3: TRUE COPY OF PETITION FOR WAIVER DT.15.5.97 FILED BY PETITIONER FIRM.

P4: TRUE COPY OF ORDER PASSED BY R3 DT.16.2.2000.

P5: TRUE COPY OF NOTICE FOR SETTLING SALE PROCLAMATION DT.9.3.2000.

P6: .DO. .DO.

TRUE COPY

PA TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.9548 of 2000

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Dated this the 14th day of November, 2007.

JUDGMENT

Heard counsel for the petitioners and Standing Counsel for the Income Tax Department. The petitioner is challenging Ext.P4 order whereunder the Chief Commissioner of Income Tax has declined petitioners' application for waiver of interest demanded under Sections 234A and 234B of the Income Tax Act. I have gone through the impugned order. The clearcut finding of the Commissioner is that petitioners have not proved the existence of any circumstance referred to in the Board's Circular dated 23.5.1996 for waiver of interest. Even though petitioners contended that interest demanded is penal in nature, the finding of this court in the decision reported in 242 ITR 400 is that interest is compensatory in nature. Interest under Sections 234A and 234B are mandatory in nature and unless petitioners establish grounds for waiver recognised by the Board's Circular in the matter, petitioners are not entitled to any waiver. It is seen from the counter affidavit that reduction in interest was granted consequent upon reduction in demand of tax in appeal. Moreover, it is seen that petitioners have been delaying filing of returns even for the three earlier

assessment years. Further, assessed tax was also not paid by the petitioner and the amount was paid only under compulsion in recovery proceedings. In the circumstances, I do not find any ground to interfere with Ext.P4 order declining waiver of interest. The O.P. is accordingly dismissed.

C.N.RAMACHANDRAN NAIR
Judge

pms